IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7744 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : YES

5. Whether it is to be circulated to the Civil Judge? : YES

UNITED AGENCIES

Versus

AHMEDABAD MERCANTILE CO. OP. BANK LTD.

Appearance:

MR BHARAT R PANDYA for Petitioners

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 18/06/2001

ORAL JUDGEMENT

The respondent-bank filed Arbitration Suit No. 1951 of 1993. An ex-parte decree came to be passed in the above suit on 1.11.1994. The petitioners filed restoration application No. 2/96 which came to be rejected by the Board of Nominees. The petitioners thereupon preferred Appeal No. 94 of 1996 which came to be dismissed by the Gujarat State Co-operative Tribunal on 3.4.1998 on the ground that the learned advocate for the petitioners was not present when the appeal was

called out for hearing. Thereafter, the petitioners filed restoration application No. 17 of 1998 which also came to be rejected by the Tribunal on 4.9.1999. The present petition was filed in October, 1999 for challenging the judgment and order of the Tribunal in appeal as well as on restoration applications.

2. At the hearing of this petition, the learned counsel for the petitioners submits that the Tribunal ought to have granted the restoration applications when the petitioners had shown that the petitioners had bona fide acted by paying a substantial amount of Rs.2,92,214/- as against the bank's claim for Rs.3,40,651-80 plus interest from the date of the suit.

The learned counsel submits that the Tribunal erred in not allowing the petitioners' restoration application No. 17/98 when it was pointed out that the learned advocate for the petitioners could not remain present or make an alternative arrangement to mention the matter.

3. It appears to the Court that in such cases each matter is required to be decided in the facts and circumstances of the case. There is, however, some substance in the contention being urged on behalf of the petitioners that when the petitioners had made substantial payments during pendency of the proceedings before the Tribunal, the Tribunal ought to have taken the same into consideration before passing any final orders rejecting the restoration applications.

This Court is of the view that whenever such matters come up before the Tribunal or the Board of Nominees, the Tribunal/Board of Nominees must not mechanically pass orders refusing to grant restoration applications, but must make an attempt to find out whether the litigant before the Tribunal has shown bona fide conduct or not. If the debtor has made substantial payments to the creditor-bank, the restoration application of such a debtor is required to be considered in that perspective and such a debtor acting bona fide, who is interested in getting his bona fide disputes adjudicated upon, cannot be treated at par with another debtor who has not shown any bona fides and who has not made payment of substantial dues of the creditor-bank. Such differentiation expected to be made by the Tribunal and such other judicial or quasi-judicial authorities would be more conducive to settlement of disputes rather than any mechanical approach on the part of any judicial or quasi judicial authority.

4. The learned counsel for the petitioners, however, submits that now he has instructions to withdraw the petition as the respondent-bank is agreeable to negotiate the matter with the petitioners regarding the rate of interest which should be charged for the period in question.

5. In view of the above request, the petition is permitted to be withdrawn, but subject to the aforesaid observations.

A copy of this order shall be sent to the President of the Gujarat State Co-operative Tribunal and shall also be circulated amongst the Boards of Nominees all over the State.

(M.S. Shah, J.)
sundar/-